

Exhibit No. 28
Zoning Ordinance Rewrite
Public Hearing
Dates: 6/16 & 6/30/08

*Corporate General Partner: Congressional Properties L.P.
Rollins Park Section II L.P.
Rollins Park Section III L.P.
Congressional Towers Section I LP
Congressional Towers Section II LP
Managing Member: Rollins-Congressional Clubhouse, LLC*

PR&B, Inc.

c/o Rakusin & Becker Management, Inc., 4400 East West Highway, Suite H, Bethesda, Maryland 20814 (301)656-7816; FAX (301)907-3851

June 26, 2008

The Honorable Susan R. Hoffmann, Mayor
City of Rockville Mayor and Council
111 Maryland Avenue
Rockville, Maryland 20850

Re: Proposed Rockville Zoning Ordinance Changes
Congressional Towers, Rollins Park,
Rollins Congressional Clubhouse

Dear Mayor Hoffman and Members of the Council:

I write in connection with your upcoming hearings on proposed zoning ordinance changes on behalf of Congressional Towers and Rollins Park Apartments, as well as Rollins Congressional Clubhouse, the accessory recreational facility serving these apartments and the neighboring single family homes, all located on the west side of East Jefferson Street.

Specifically, I wish to make two primary points: (1) to strongly support the provisions in the proposed Zoning Ordinance that will grandfather certain existing projects that conform to the development standards of their current zoning; and (2) to request that the City clarify that qualified swimming pools and related amenities will remain permitted accessory uses under the new Zoning Ordinance, as provided under the Zoning Text Amendment approved in 2004.

This development is on property that is currently "split zoned" R-20 and R-30 and consists of four 7-story, mid-rise buildings, twelve garden style apartment buildings, and 172 townhomes, providing a total of 1,149 apartments and townhomes. The complex also includes the clubhouse, three swimming pools, and related facilities as accessory uses and is within close proximity to METRO, various bus routes, shopping, offices, public park facilities, and adjacent to the Woodmont Country Club. The property has remained under the same ownership since it was designed and developed in the early 1960's, and has been maintained with numerous interior and exterior renovations and upgrades, including the recent upgrade of the clubhouse and pool facility two years ago, facilitated in part with recent re-financings. We think it remains highly compatible with the overall neighborhood, and an invaluable source of well located multifamily housing in the City.

The original Use Permits for the complex were obtained over 45 years ago and the Owners have worked closely with the City over the years to ensure that the property, the buildings, and the accessory facilities remain in compliance with the applicable City laws and regulations. Within the last several years, the City has confirmed that the existing development on the property conforms to the current provisions of the Zoning Ordinance.

Under the proposed revisions to the Zoning Ordinance, the complex will be zoned RMD-25 and as you review these proposed ordinance changes, we urge you to ensure no "new" ordinance changes will imperil the conforming use designation of this property.

The Honorable Susan R. Hoffmann, Mayor
City of Rockville Mayor and Council
June 26, 2008
page 2

In a letter to the Planning Commission, dated March 28, 2008, we urged the City not to adopt any provisions that would render this complex or properties within this complex as non-conforming. Many other property owners in the City echoed our concerns. The Planning Commission heard testimony from various property owners and lenders about the adverse implications of developments being designated "non-conforming" and your staff also provided information about the potential consequences. For example, if a development is non-conforming, it may be difficult, or even impossible to refinance it, and property insurance is substantially more difficult and expensive to obtain. Being classified as "non-conforming" also acts as a disincentive for an owner to invest money in the upkeep and improvement of a project, and can create even more serious problems if an owner wants to undertake a major renovation, during which time the property may become vacant. Any of these scenarios would cast doubt on the future of these multifamily housing units.

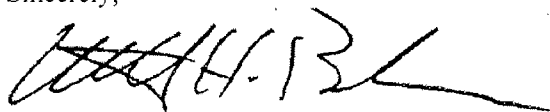
We are pleased that the Commission listened carefully to the concerns of property Owners, their representatives, and lenders regarding the perils associated with rendering buildings and developments "non-conforming" or "not non-conforming" and strongly support the revised language now contained in Section 25.11.04 of the draft Zoning Ordinance that eliminates the "non-conforming" issue as it relates to properties such as Congressional Towers and Rollins Park Apartments, and clarifies such to remain "conforming" under the ordinance.

There is one other issue that we urge the City to clarify. The legal status of the swimming pool in our complex raises a potential problem under the proposed Zoning Ordinance that can be easily remedied. In 2004, the City revised the Zoning Ordinance to confirm that swimming pools such as the facility in our complex, that were built to serve a development containing both single-family and multi-family dwellings, are a permitted accessory use within the definition of "swimming pool, accessory." This definition has not changed in the proposed Zoning Ordinance. However, the land use tables contained in the most recent revisions to the Ordinance do not expressly include this accessory use. Apparently, such uses are intended to be included in the broader category "accessories", but we believe the proposed Zoning Ordinance should be revised to confirm the legal status of such uses by providing a new definition in Section 25.03.02 for the word "accessories" that would include "all accessory uses" defined elsewhere in the Ordinance. Alternatively, the specific "swimming pool accessory" use classification should be added to the table of uses. This facility is a valuable benefit to both the multifamily and single family residents in the community and we urge the Mayor and Council to make either of these clarifications to the proposed Zoning Ordinance to make it clear that such accessory uses now permitted under the Zoning Ordinance will continue to be permitted under the provisions of the "new" Zoning Ordinance.

These new zoning ordinance changes offer much in the way of moving the City forward and setting the stage for ongoing land planning efforts. But such progress should not come at the cost of imperiling valuable and scarce housing resources which remain viable and compatible with current community standards.

Thank you for your consideration of these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "KH. Becker", with a long horizontal flourish extending to the right.

Kenneth H. Becker, President
PR & B, Inc., General Partner

M. A. VAN BALGOOY
313 Twinbrook Parkway ♦ Rockville, MD 20851
(301) 251-6371 ♦ mvanbalgooy@verizon.net

July 1, 2008

Mayor and Council
City of Rockville
111 Maryland Avenue
Rockville, Maryland 20850

Dear Mayor and Council:

To improve transparency and efficiency of the Historic District designation process, I am requesting a revision to Article 6 of the draft Rockville Zoning Code by granting the Historic District Commission the authority to file an application for a Sectional Map Amendment. Section 25.06.01 only allows the filing of an application for a Sectional Map Amendment by the Planning Commission or the Mayor and Council.

This change will allow the Historic District Commission to forward its recommendation for an Historic District along with an application for the Sectional Map Amendment with the Planning Commission, who will then forward their recommendation to the Mayor and Council for final determination of the Historic District—eliminating a step and more efficiently processing a Historic District designation.

The current process requires the Mayor and Council to review the designation twice, the first time without a public hearing. This additional step often creates confusion for everyone involved, including property owners and the neighborhood. Because it is the first time the item appears on the Mayor and Council agenda, the public believes they will have an opportunity to discuss the issue, however, it is not allowed, resulting in unnecessary frustration. Secondly, the Mayor and Council sometimes render a decision based on faulty or incomplete information because they are not allowed to solicit information from staff, the HDC, or the public. This bureaucratic tedium is an unnecessary obstacle to our community's goal of efficiency and transparency in government.

Attached please find a flowchart demonstrating the complexity of the current Historic District designation process in the City of Rockville.

Cordially,

Max A. van Balgooy

Tuesday, July 01, 2008

Nomination may be submitted by the property owner, owner's agent, Mayor and Council, Historic District Commission, Planning Commission, or the public.





"M. A. van Balgooy"
<mvanbalgooy@verizon.net>

07/01/2008 03:14 PM

To <mayorcouncil@rockvillemd.gov>

cc <zoning@rockvillemd.gov>

bcc

Subject Zoning Code: revision to Article 6 on historic
designation process

Please accept the attached comments on Article 6 of the draft Zoning Code for the public record.

Max A. van Balgooy
mvanbalgooy@verizon.net



LT Council Zoning historic designation.pdf

RECEIVED
CITY CLERK'S OFFICE
JUN 27 2008 11:09
Anne Marie Vassallo
Croydon Park Resident
Rockville, Maryland 20850

June 27, 2008

Mayor and Council of the City of Rockville
111 Maryland Avenue
Rockville, Maryland 20850

Re: Planning Commission Recommended Final Draft Zoning Ordinance

Dear Mayor Hoffmann and Members of the City Council:

Thank you for the opportunity to present my comments and concerns in respect to the Planning Commission Recommended Final Draft Zoning Ordinance dated May 21, 2008, which has been transmitted to the Mayor and Council for public hearing, worksessions and presumably, ultimate adoption following review and revisions. My interest arises on many fronts, including my work as a zoning and real estate attorney, as a planner, and of greatest relevance to the Mayor and Council, as a Rockville resident. The City has many fine aspects indicating a well-visioned and well-planned locale, including its walkable neighborhoods, its zoning preservation of neighborhood-embedded and neighborhood-serving retail uses and its offering of residential, commercial, and industrial uses to create a complete City. It is crucial that Rockville not endanger its strong economic base as well as its efficacy for maintaining residents and attracting newcomers.

My primary concern is the section of the Final Draft Zoning Ordinance regarding residential development standards, namely the Planning Commission's deletion of Section 25.10.08(f) which you may know as the "grandfathering" provision for existing homes in the R-60, R-75 and R-90 zones. In the name of addressing the overused term "mansionization," - which is clearly different things to different people - (whether that means a way to stay in the same neighborhood when a blended family occurs, or a way to help aging parents live near their families, or a way to create more living space in one's existing neighborhood without moving farther out and increasing commuting and gasoline costs), I believe the Final Draft Zoning Ordinance will create a whole other set of consequences which you may not realize and may not have sufficiently examined.

Should the Draft Zoning Ordinance continue to lack a grandfathering provision for these residential zones (and for any zone), a discrete number of existing Rockville homes and buildings will instantly, with the stroke of a legislative pen, become non-conforming. I ask of the Mayor and Council, has the City thoroughly investigated not only the effect on saleability, insurability and potentially title of such a scenario, but has the City also compiled an inventory of the structures that will be so affected and notified impacted owners of this very complex legal outcome? If the City has not done so, then the City's work in connection with the Draft Zoning Ordinance is far from complete.

Value Impacts

First, the absence of grandfathering will immediately affect value, whether real value or perceived value. And of course perceived value is what creates real value. This affects what a prospective resident who is contemplating a purchase can do with a property; this creates an entirely new negotiating tool between buyer and seller; and this affects the value for those who already have a home in Rockville. The impacts extend both to home sales and to home refinances. Certainly, if I am trying to sell a 4,000 s.f. home and the Buyer can only rebuild a 2,500 s.f. home if that home should be destroyed or severely damaged, then that Buyer is not going to pay to buy a 4,000 s.f. home. The scenario is mimicked in a refinance situation.

Insurance Impacts

Next, have you looked at what happens with an existing property that does not meet the new zoning standards, and whether anyone who would buy that property is buying a potential insurance claim, whether that might be a possible hazard insurance or title insurance claim? Do you know how the insurers will evaluate these new restrictions according to their underwriting standards? I do not know who might wish to be that test case and I doubt you will find many volunteers.

There is a specific value placed on a home according to its size, among other things. Most homeowners purchase replacement value insurance in order to protect themselves in the event of a consuming fire, a catastrophic flood, severe damage from a falling tree, etc. (the list goes on). Rockville homeowners with non-conforming homes are likely to have a smaller pool from which to buy hazard and replacement insurance and to face potentially increased or prohibitive insurance premiums. And, even after dutifully having made insurance premium payments, a non-conforming home owner who suffers a catastrophic loss will be paid only for actual replacement value, not necessarily for the existing mortgage on that destroyed home. *It is incumbent that you take the preventative steps to remove the uncertainty and the hardship from this scenario for Rockville property owners and prospective property owners.*

Title Impacts

Has the City evaluated the effect on title and a seller's ability to convey good and marketable title to a property that cannot be reconstructed to the manner in which it is sold? What are the additional uncertainties that come into play with homes that are *partially* damaged by fire, flood, pest, etc., yet require substantial repair beyond the threshold that would define "new construction?"

Must Include Grandfathering

The City must include grandfathering in all aspects for existing structures and must avoid creating the non-conformities that raise so many complex issues.

Sincerely,



Anne Marie Vassallo

RECEIVED
CITY CLERK'S OFFICE

JUL -2 AM 10:39

Exhibit No. 31
Zoning Ordinance Rewrite
Public Hearing
Dates: 6/16 & 6/30/08

Potomac Woods Citizens Association
Rockville, Maryland

June 30, 2008

Mayor and Council of the City of Rockville
111 Maryland Avenue
Rockville, Maryland 20850

Re: Proposed Draft Zoning Ordinance Revision

Dear Mayor Hoffmann and Councilmembers:

The Potomac Woods Citizens Association ("PWCA") represents over 400 households in Rockville, including the Potomac Woods, Orchard Ridge and Falls Orchard subdivisions. We are located west of I-270 between Montrose Road and Wootton Parkway, east of Falls Road. A majority of the community is zoned R-90, but a small portion is zoned R-200.

PWCA testified at the public hearing before the Planning Commission, and submitted supplemental testimony, in opposition to the mansionization proposals as it applies to our community. Copies of those letters are attached.

Specifically, we do not share the same sensibilities with respect to this concept as did the Planning Commission or RORZOR. As another Rockville resident stated, mansionization means different things to different people: for some it is way to care for aging relatives, for others a way to remain in a convenient location while accommodating modern needs, among many other reasons. In the opinion of the PWCA, the R-90 development standards set an acceptable building envelope for any house within the zone. In fact, there have been several remodels/rebuilds in our community utilizing the existing standards and the Board has not heard a single complaint with respect to their size and mass. We believe that demonstrates there is not a problem that needs correcting.

On a more direct note, the mansionization regulations create two classes of citizens in Rockville and are completely unresponsive to the needs of modern-day families. First, the residents fortunate enough to live in the R-200 section of our community are unfettered by the new height and floor area restrictions, which, therefore, have an immediate and undeniable effect on the value of the homes in the R-90 section. PWCA has strived for the entirety of its existence to eliminate any such distinction. In addition, the mansionization regulations divide Rockville into two communities: the "haves" in

Fallsgrove and King Farm with larger, modern homes and the “have nots” elsewhere trapped with their 1960s homes without such modern amenities. We find this distinction to be an anathema to the values which this Mayor and Council espouse. If there is a family in our community that desires a house of any size for whatever reason, as long as it meets the existing R-90 development standards, PWCA has no objection – it is a simple matter of your right to enjoy your property.

We note that the Town of Chevy Chase recently enacted a similar restriction on the size of new homes in their jurisdiction. Under their law, the minimum house size was 3,000 square feet, which in Rockville is the maximum house size! (We understand there are exceptions, but they are not practical as discussed below.) This is an enormous discrepancy and further puts Rockville at a disadvantage as compared to other communities. But, what it really shows is that the Planning Commission, unintentionally, we assume, grossly misjudged what is “average” in the region and what is necessary to accommodate today’s families. Taken together, these restrictions significantly affect the value of the R-90 homes within the Potomac Woods community.

With respect to the ability of homeowners to expand their house by a certain percentage, we do not think the regulations are practical. The cost of the site plan process alone is enough to turn someone away (since their house has lost a portion of its value through this legislation, they will not be able to borrow as much money for the remodel and, therefore, \$10,000 for engineers really makes a difference, plus, of course, the cost of the time waiting for the approval that may or may not be granted). The standards for the “extra” square footage are vague, at best. Certainly, they are not understandable to the average homeowner. And, while we certainly support every “green” initiative that is offered, we do not think that it makes sense to mandate such requirements in order for someone to build the same house they could build today. Again, cost is a critical factor here. Rather, PWCA encourages the Mayor and Council to incentivize “green” building initiatives in other ways.

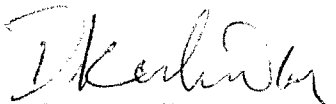
Finally, we understand that the Zoning Ordinance does not “grandfather” any existing buildings in residential zones that may not comply with the mansionization standards. If this legislation is passed (and we hope it is not), we urge the Mayor and Council to add such language to the ordinance before our residents experience problems getting insurance, receive increased premiums or get into trouble with their lenders. It is extremely disturbing to the PWCA board members and our community residents that the City does not know how many people will be affected by this new regulation, particularly since it has such a serious impact. The new height restrictions are said to accommodate an “average” two story home, of which we have many in our community. We need to know if any of our homes exceed the height restriction under the new definition – many of them may. If they are not grandfathered, we cannot imagine the multitude of problems that may arise.

Mayor and Council of the City of Rockville
July 30, 2008
Page 3 of 3

In this case, PWCA strongly believes that the remedy being proposed is worse than the disease. PWCA takes no issue with its residents building larger homes, for the reasons stated above, and believes that the existing R-90 development standards (including the "traditional" definition of height) adequately protect our neighborhood. But, the new standards will result in an immediate decrease in property values and make a portion of our neighborhood undesirable to buyers. Moreover, we believe that the home size restriction casts a negative light over the entire City for anyone looking to buy a home – impacting the City's reputation as a whole and PWCA in particular since we are located along the City/County boundary. We, therefore, urge the Mayor and Council to reject the mansionization legislation.

Thank you for your attention to our concerns. We look forward to working with you in the future.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Kerlina".

Dave Kerlina, President
Potomac Woods Citizen Association

Potomac Woods Citizens Association
Rockville, Maryland

January 30, 2008

City of Rockville Planning Commission
111 Maryland Avenue
Rockville, Maryland 20850

Re: Proposed Draft Zoning Ordinance Revision

Dear Planning Commission Members:

The Potomac Woods Citizens Association ("PWCA") represents over 400 households in Rockville, including the Potomac Woods, Orchard Ridge and Falls Orchard subdivisions. We are located west of I-270 between Montrose Road and Wootton Parkway, east of Falls Road. A majority of the community is zoned R-90, but a small portion is zoned R-200.

The Board of Directors, after a review of the draft Zoning Ordinance, passed the following Resolution:

PWCA believes Rockville is an ideal place to live, work and play and supports the City's efforts to bring higher standards to new development within the City. However, PWCA does not support including the R-90 Zone in the special "mansionization" restrictions on new housing and/or additions to existing houses. The regulations would create a disparity between the R-200 areas of our community (not included in the mansionization regulations) and would effectively prohibit many homeowners from adding value to their homes. Many property owners desire to stay in our neighborhood because of its quality of services, schools and convenience to major arteries. However, the existing homes do not adequately accommodate today's families and under the proposed regulations, some homes could not be improved, forcing people out of the area in search of more modern living spaces. The Site Plan process required to accommodate some larger homes is too cumbersome and expensive for ordinary homeowners.

the City as in the core areas. PWCA believes the existing R-90 zoning regulations adequately protect the integrity of our neighborhood.

Finally, PWCA fears that restrictions on square footage would act to devalue our property as compared to those immediately adjacent neighborhoods outside of the City. Therefore, PWCA will ask the City Planning Commission and Mayor and Council to remove the R-90 Zone from the mansionization section of the new zoning ordinance.

Specifically, we request the following changes:

- Definition of "Building, Height of," section (b)(5) – delete all references to the R-90 Zone
- 25.10.08 – Delete all references to the R-90 Zone

Thank you for your attention to our concerns. We look forward to working with you in the future.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Kerlina", with a long horizontal flourish extending to the right.

Dave Kerlina, President
Potomac Woods Citizen Association

Potomac Woods Citizens Association
Rockville, Maryland

March 28, 2008

City of Rockville Planning Commission
111 Maryland Avenue
Rockville, Maryland 20850

Re: Proposed Draft Zoning Ordinance Revision

Dear Planning Commission Members:

On January 30, 2008, the Potomac Woods Citizens Association ("PWCA") presented testimony opposing the proposed mansionization regulations. At the hearing, Commissioner Ostell inquired as to what mansionization limits PWCA would find acceptable. In response, the PWCA Board met to discuss the matter and reiterates its previous position that the existing development standards adequately protect the integrity of the neighborhood. Consequently, PWCA does not support any type of FAR limitation on new homes or additions in the R-90 Zone.

The Board's position is based on several factors, including the disparities produced by such regulations, the necessity of such stringent requirements and the impact on property values.

First, the topography of the neighborhood is not uniform – some homes are on flat lots, other homes sit on lots that significantly slope down from the street and still others have steep slopes in the rear yards. As a result, because cellars and basements are defined differently, certain homes will be able to achieve more living space than others under these regulations. Specifically, homes on flat lots will be able to achieve up to 3,000 square feet above ground, plus a cellar, while homes on sloping lots would have to include their basement within the maximum FAR. In addition, a portion of the community is zoned R-200. These homes would not be impacted by the mansionization regulations and would create two tiers of properties in the neighborhood, a situation PWCA has taken great pains to avoid.

We note that the option to achieve additional FAR via the Site Plan process is not simple for our residents and would significantly add to the cost, complication and uncertainty of any construction. The process and the potential impact are far more extensive than a

variance proceeding. Therefore, PWCA does not find it a viable option to regulate these disparities.

Second, the new construction in our neighborhood, built under the existing standards, has garnered little to no attention from PWCA members. This indicates to the Board that the existing standards are sufficient to protect the character of the neighborhood and additional standards are unnecessary.

Finally, in addition to the R-200 property within the community, Potomac Woods lies on the City limits and borders property in the County unencumbered by similar size restrictions. Clearly, the mansionization regulations would have a significant impact on property values in general, but even more noticeable in our community where buyers could choose between the two, while keeping the same amenities.

We request that the Planning Commission seriously consider this message, echoed by other community groups around the City. There are no ethical or value judgments which should be attached to a property owners' desire for a home greater than 3,000 square feet. Such homes can be, and are, designed to be energy efficient and environmentally friendly. Further, national average home sizes are not representative of local average home sizes and to try and compare the two turns a blind eye to our location in the metropolitan region. Our members desire to add additions or reconstruct their homes for a variety of reasons (growing families, caring for older relatives, etc.), but want to remain in Rockville to take advantage of all the services it offers its residents. We urge the Planning Commission to allow them to do so.

The PWCA Board of Directors reiterates the following Resolution:

PWCA believes Rockville is an ideal place to live, work and play and supports the City's efforts to bring higher standards to new development within the City. However, PWCA does not support including the R-90 Zone in the special "mansionization" restrictions on new housing and/or additions to existing houses. The regulations would create a disparity between the R-200 areas of our community (not included in the mansionization regulations) and would effectively prohibit many homeowners from adding value to their homes. Many property owners desire to stay in our neighborhood because of its quality of services, schools and convenience to major arteries. However, the existing homes do not adequately accommodate today's families and under the proposed regulations, some homes could not be improved, forcing people out of the area in search of more modern living spaces. The Site Plan process required to accommodate some larger homes is too cumbersome and expensive for ordinary homeowners.

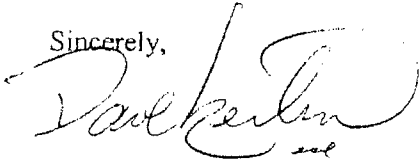
City of Rockville Planning Commission
March 28, 2008
Page 3 of 3

Moreover, the mansionization the Zoning Ordinance is trying to regulate does not present the same issues in the R-90 communities on the edges of the City as in the core areas. PWCA believes the existing R-90 zoning regulations adequately protect the integrity of our neighborhood.

Finally, PWCA fears that restrictions on square footage would act to devalue our property as compared to those immediately adjacent neighborhoods outside of the City. Therefore, PWCA will ask the City Planning Commission and Mayor and Council to remove the R-90 Zone from the mansionization section of the new zoning ordinance.

Thank you for your attention to our concerns. We look forward to working with you in the future.

Sincerely,

A handwritten signature in cursive script, appearing to read "Dave Kerlina", with a small "and" written below the name.

Dave Kerlina, President
Potomac Woods Citizen Association



potomacwoods2@aol.com

07/02/2008 10:02 AM

To mayorcouncil@rockvillemd.gov

cc

bcc

Subject PWCA statement on Zoning Ordinance

Dear Mayor and Council:

The Potomac Woods Citizens Association had prepared a statement for the June 30th public hearing on the Zoning Ordinance, but, unfortunately, a representative was unable to attend. Please accept the attached letter into the record detailing PWCA's opposition to the mansionization proposal. If there is another opportunity to make a presentation to the Mayor and Council, please advise us and we will try to participate.

Thank you,
Dave Kerlina
President, PWCA



[Get the Moviefone Toolbar](#). Showtimes, theaters, movie news, & more! [PWCA zoning comments.pdf](#)

Deane

RECEIVED

CITY CLERK'S OFFICE

2008 JUL -3 AM 10:40



Exhibit No. 32
Zoning Ordinance Rewrite
Public Hearing
Dates: 6/16 & 6/30/08

Isiah Leggett
County Executive

OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Routed To:
☒ Council
☐ City Clerk
☒ City Manager

☒ City Attorney
☐ Council Support Specialist
☒ Other *S. Swift*
D. Melland
J. Wasilak

July 1, 2008

The Honorable Mayor and Council
City of Rockville
111 Maryland Avenue
Rockville, Maryland 20850

Dear Mayor and Council:

I am writing regarding the City's Draft Zoning Ordinance and Zoning Map, specifically as the proposals relate to a number of Montgomery County Public Schools properties. First, I understand that the Draft Zoning Map has designated the Board of Education's property at 580 North Stonestreet an R-60 designation. This designation represents a significant down-zoning from the current zoning of six residential lots per acre. Given this property's close proximity to the Rockville Metro Station, it seems ideally suited for the proposed new transitional mixed use zone. Such a designation would be more consistent with the County's efforts to ensure that Smart Growth options for land use development are pursued when possible and prudent. We believe this property is ideally suited for a designation that promotes Smart Growth.

In addition, I am concerned with the proposed new Park Zone – a zone overlay on all city parks and public school sites. I understand the intent, but I am concerned that it significantly reduces the flexibility and land value of Board of Education properties and conflicts with the County's school reuse policies. Given that any surplus Board of Education properties convey to the County, I am concerned that such a zone would have significant adverse effect on the County's interests.

If you would like to discuss my concerns, please let me know or contact Diane Schwartz-Jones, Assistant Chief Administrative Officer at 240-777-2561. Thank you.

Sincerely,

Isiah Leggett
County Executive

IL:vj

ROBERT E. REIVER
7825 Tuckerman Lane
Suite 210
Potomac, Maryland 20854

Exhibit No. 33
Zoning Ordinance Rewrite
Public Hearing
Dates: 6/16 & 6/30/08

301.983.2555

FAX 301.983.6665

July 7, 2008

The Hon. Susan R. Hoffmann, Mayor
City of Rockville
Rockville City Hall
111 Maryland Avenue
Rockville, MD 20850

Routed To:
☒ Council
☐ City Clerk
☒ City Manager

☒ City Attorney
☐ Council Support Specialist
☒ Other

Susan Swift
Dean Mellander
Jim Wasilak

2008 JUL -7 PM 2:54
CITY CLERK'S OFFICE

Re: Draft Zoning Ordinance/WINX Property

Dear Mayor Hoffmann:

I just returned from being out of town and was informed that there will be a joint meeting of the Mayor and Council and the Planning Commission tonight. Further, I was informed by Perry Cho, the now owner of the WINX property, that he has not received a final response to his request for additional sewer and water service.

As you know, the property has been developed in accordance with the Montgomery County I-1 Zone and there is sufficient documentation that indicates that this property should not and never will be developed for residential use. Accordingly, I believe it would be beneficial for the Mayor, City Council and the Planning Commission to discuss tonight how the WINX property should be developed and that possibly an appropriate Text Amendment should be included in the new Zoning Ordinance that would provide sewer and water service for this property.

I believe the Mayor, City Council and Planning Commission need to indicate which one of the following two scenarios would be the most beneficial for the Lincoln Park Community and the residents who live on Ashley Avenue:

Scenario #1: (Sewer and water service would not be increased pursuant to Perry Cho's request.)

The property would be developed with a building consisting of 23,850 square feet using the existing sewer and water service already in place by the city. This building would not create the buffer or privacy requested by Joe

Carpenter, the contiguous property owner. It further would not provide the screening and light buffer requested by the residents on Ashley Avenue who have submitted a Petition supporting the Development Plan submitted by Mr. Cho.

The remaining portion of the property that would not have a building would be subdivided into quarter-acre lots that would either be sold or leased to towing companies, contractors and landscapers who have expressed interest in buying or leasing storage facilities.

Scenario #2: *(The City of Rockville would provide sewer and water service to the WINX property.)*

Perry Cho would be able to build at 30,000-square-foot building pursuant to a Development Plan that creates the greatest buffer and privacy to Joe Carpenter. The remainder of the property would also be developed with an additional building in accordance with the Development Plan that has been supported by the residents on Ashley Avenue.

This plan would provide an additional buffer from noise and light to the residents on Ashley Avenue. The property would also be developed in accordance with the Industrial Zone that is in the process of being incorporated in the Rockville Zoning Ordinance. The owner would execute covenants to provide that it would be developed in accordance with the new Rockville City Ordinance.

The covenants would also provide the following:

~ That all employees and suppliers and any subsequent occupants of the WINX property would have to access the development by using Dover Road and would not travel along North Stonestreet Avenue, Woodland Road, Crabb Avenue, Howard Avenue, Lincoln Avenue, Spring Avenue, Frederick Avenue, Elizabeth Avenue and Ashley Avenue. All leases would incorporate these ingress and egress restrictions.

~ That the developer would install a fence that would separate the industrial property from the residential property on the other side of the Conservation Easement, away from the homes, so that it would not be immediately facing the residents across Ashley Avenue. The fence would have privacy buffer inserts to create a shrubbery appearance.

~ That the building elevations facing Ashley Avenue would be attractive and that all lights on the property would be directed away from the homes on Ashley Avenue.

In light of the recorded easements that prevent the WINX property from being developed for residential use and the recommendation of the Montgomery County Local Emergency Planning Council that the WINX property should not be residential, it is respectfully requested that this matter be promptly addressed.

Thank you for your attention to this matter.

Very truly yours,

Robert E. Reiver

RER:pa

cc: Anne M. Robbins, Councilmember
Phyllis Marcuccio, Councilmember
John Britton, Councilmember
Piotr Gajewski, Councilmember
Scott Ullery, City Manager
Robin Wiener, Chair, Planning Commission
David Hill, Planning Commissioner
Kate Ostell, Planning Commissioner
Steve Johnson, Planning Commissioner
Tracy Pakulniewicz-Chidiac, Planning Commissioner
Sarah Medearis, Planning Commissioner
John Tyner, Planning Commissioner
Jim Wasilak, Chief of Planning

WESTMORE DEVELOPMENT, LLC

7825 TUCKERMAN LANE
SUITE 210
POTOMAC, MD 20854

301•983•2555

301•983•6665 FAX

May 12, 2008

The Hon. Susan R. Hoffmann, Mayor
City of Rockville
Rockville City Hall
111 Maryland Avenue
Rockville, MD 20850

2008 JUN -7 PM 2:53

CITY CLERK'S OFFICE

RECEIVED

Re: WINX Property -- Additional Information in Determining the
Appropriate Land Use for the WINX property and Determining What is in
the Best Interest for the Lincoln Park Community

Dear Mayor Hoffmann:

I am forwarding this letter to you as a follow-up of your meeting with Perry Cho and me on April 14th when we met during the "Drop-In" time prior to the Mayor and Council meeting.

Since Councilmember Gajewski and even my family and friends have asked why I am still involved in the WINX property since I sold it to Perry Cho's company in November, 2007, this letter will explain why I, as the former land owner, have decided to pursue the appropriate development of this land.

During the 4-1/2 years my company owned the WINX property, I became very friendly with the residents on Ashley Avenue and in particular, Joe Carpenter, the only contiguous residential property owner. I told those residents that I will do my best in order for the property to be developed in a manner which they fully support. When Perry Cho negotiated to purchase

the property, I verbally promised him if he would develop it in a manner that was fully supported by the residents on Ashley Avenue and Joe Carpenter that I would assist him without compensation or any financial interest in his venture.

I realize that the Lincoln Park Master Plan and the Conservation Plan have designated the WINX property to be residential in the event it is ever annexed to the City; however, there are numerous documents that have been provided to the City that indicate that the designation of the WINX property for residential use is inappropriate. Unfortunately, the Mayor and Council never considered the facts as outlined in the following correspondence:

1. January 24, 2007, letter addressed to the Hon. Larry Giammo, Mayor, with attachments;
2. February 6, 2007 letter to Mayor Giammo;
3. February 22, 2007, letter to Mayor Giammo;
4. February 26, 2007, letter to Mayor Giammo containing Factual Statement and Questions;
5. WINX Property Comments and Questions delivered to Scott Ullery on February 1, 2008 for distribution to you and all Councilmembers;
6. February 26, 2008 letter addressed to you and all Councilmembers.

During our meeting on April 14th, you felt that the industrial use of the WINX property was an interim use and that one day, ultimately the property would be appropriate for residential development. Accordingly, you told Perry Cho that the City would not provide the increased sewer and water service as requested by him for the development of the WINX property in a manner which was fully supported by the residents on Ashley Avenue.

Unfortunately, when we met, I failed to indicate to you that because of a recorded Declaration of Easement along the north portion of the property, in addition to all of the other reasons as previously set forth above in my prior correspondence, the WINX property cannot realistically ever be developed for residential use. Attached to this letter is **Exhibit A** to the

Declaration of Easement which outlines Parcel B, consisting of 10.06 acres and part of Parcel A which consists of 12,749 square feet. Perry Cho's company, Interstate Westmore, LLC, acquired all of Parcel B (10.06 acres) with the understanding the my company would retain ownership of the 12,749 square feet because of my Lease Agreement with Multicultural Radio Broadcasting which provided for the North Tower to remain on that property. Since the radio tower is on the small parcel B that I still own, I do not need sewer and water since that radio tower will be there for the next 30 years.

Accordingly, with the Declaration of Easement recorded in Liber 35035 at Folio 266 among the Land Records of Montgomery County, Maryland, there is an ingress and egress Easement and underground radial easement that actually extends into the property acquired by Perry Cho's company.

Hopefully, with this additional information, you will reconsider your decision of not extending the sewer and water service for Mr. Cho's development.

Thank you for your courtesy and cooperation.

Very truly yours,

Robert E. Reiver

Enclosure
RER:pa

cc: Anne M. Robbins, Councilmember
Phyllis Marcuccio, Councilmember
John Britton, Councilmember
Piotr Gajewski, Councilmember
Scott Ullery, City Manager

WESTMORE DEVELOPMENT, LLC

7825 TUCKERMAN LANE
SUITE 210
POTOMAC, MD 20854

301•983•2555

301•983•6665 FAX

February 26, 2008

The Hon. Susan R. Hoffmann, Mayor
City of Rockville
Rockville City Hall
111 Maryland Avenue
Rockville, MD 20850

2008 JUL -7 PM 2:53

CITY CLERK'S OFFICE

FILED

**re: WINX PROPERTY -- What is in the Best Interests for the Lincoln Park
Community?**

Dear Mayor Hoffmann:

As you know, I sent an email to you on February 15, 2008, and on February 19 a Memorandum with enclosures consisting of 33 pages relating to the WINX property. In addition, I filed a Freedom of Information Act request with the City on February 21st.

This letter is being sent to you not to be confrontational but rather for you and the other members of the City Council to have additional information for purposes of deciding how the WINX property should to be developed. The following is a brief Timeline of my involvement with the WINX property.

1. A. In January, 1998, a joint venture known as Stonestreet Avenue Joint Venture, LLC, purchased the property ("Stonestreet"). Stonestreet consisted of Richard Rankin (the owner of the VOB BMW, VOB Nissan and VOB Saab automobile dealerships located in Rockville) and Paxton-Mayberry Company, LLC, wholly owned by me. Mr. Rankin had a controlling interest in Stonestreet and was the Managing Member and had sole authority to develop the property for his intended use which was going to be an automobile storage lot for his three automobile franchises.

B. The property is in Montgomery County, zoned I-1 (Industrial). All the land surrounding the property is within the city limits of Rockville; however, it has had limited sewer and water service from the City for over 50 years (the hole in a donut). In 2000, Mr. Rankin, on behalf of Stonestreet obtained all of the required county permits to develop an automobile storage lot. Mr. Rankin obtained the required permits and never disclosed that information to me while

simultaneously attempting to acquire all of Paxton-Mayberry's interest in Stonestreet for a nominal amount.

C. There is no need to discuss the wrongdoing of Mr. Rankin and his attorneys since it is well documented in the 14 file jackets located in the Circuit Court for Montgomery County. After extensive discovery and 26 depositions, Mr. Rankin, two weeks prior to trial, conveyed all of his membership interests in the company to Paxton-Mayberry, which subsequently amended the name of the entity to Westmore Development, LLC.

2. In March, 2003, soon after I took over control of the property, Mark Pentz, then City Manager, approached me to determine if I would consider developing the WINX property for residential use. He felt that townhouses for that property would be appropriate. I told Mark that I did not believe the property was appropriate for residential development in light of the automobile repair shops that shared a 1,300-foot common property line. At the request of many residents in the Lincoln Park Neighborhood and particularly those who live on Ashley Avenue, I agreed to market the property to the various homebuilders in the area.

3. The property was presented for sale to over 15 homebuilders and developers. I met each one of them at the property and only one homebuilder, Centex, thought that it could be developed for residential use.

4. In October, 2004, Centex Homes signed a contract to purchase the WINX property with settlement contingent upon them having all required land use approvals in place by June, 2006. Centex had numerous meetings with Staff and the residents in the neighborhood. During that time period, Centex submitted to Staff more than ten development plans that were all supported, 100%, by the community. The proposed development plans consistently were not obtaining favorable comments from the City of Rockville and in particular, from former Mayor Giammo. As a result, Centex's contract terminated in June, 2006, and I decided, on my own, to try and obtain an approved development plan for residential use. Unfortunately, I was getting unfavorable feedback from the City even with the newly submitted plan that had less density and full community support.

5. During the summer of 2006, because of certain comments made by City officials, I thought that possibly there could be some environmental issues relating to the WINX property. In a letter dated May 8, 2006, from Gordon Aoyagi, Chair of the Local Emergency Planning Council to the Rockville Planning Commission, it was recommended that the WINX property be developed for low-density commercial and industrial use rather than residential. Mr. Aoyagi's letter upset the Lincoln Park neighborhood. As a result, due to political pressure, the Mayor and the City Council deleted the recommended language suggested by the Planning Commission addressing certain environmental hazards.

6. A. Because I felt there were certain "hidden facts," I had my attorney in August, 2006, file a Freedom of Information Act request with the Local Emergency Planning Council (aka Homeland Security). In September, 2006, Gordon Aoyagi forwarded to me copies of various documents which included emails that were either sent or received by Sarah H. Medearis, Planning Commissioner, during November and December, 2005, (eight months earlier). Those emails specifically stated that the WINX property is one of the highest risk hazard locations in Montgomery County and "based upon preliminary information, it would be irresponsible for any political entity to allow a zoning change that would permit residential housing in that area."

B. Unfortunately, those emails were never previously provided to me by anyone from the City of Rockville. After receiving those emails, I made further investigation and obtained Scott Ullery's handwritten notes of his meeting with Gordon Aoyagi on September 26, 2006. After reviewing all of the emails and Mr. Ullery's notes, I decided that the property should not be developed for residential use and accordingly, in October, 2006, filed the required Conservation Easement with Montgomery County dedicating three acres of the property as a wooded area so that the property could be developed for industrial use. **(ALL OF THE ABOVE FACTS WERE KNOWN TO THE MAYOR AND CITY COUNCIL PRIOR TO THE ADOPTION OF THE LINCOLN PARK NEIGHBORHOOD PLAN.)**

7. After the real estate community learned that the WINX property was not going to be developed for residential use and was in Montgomery County zoned I-1, I was contacted by a well-known disposal company that expressed interest in buying or leasing the entire property in order to park their trucks. They needed a close-in location and were very desirous of the property. Since I became friendly with several of the homeowners on Ashley Avenue during the past several years, in good conscience I did not feel comfortable with the property being used as a storage lot for garbage trucks due to the possibility that odors from those vehicles would adversely affect the residents on Ashley Avenue. Even though I was assured that the trash trucks would be empty while parked on the WINX property, I informed their attorney that we would have to terminate negotiations.

8. Because the WINX property had limited sewer and water service, the property was going to be developed as an outdoor storage facility providing 19 quarter-acre parcels available for landscapers, towing companies and nearby auto shops. I was also considering commercial container storage or bus storage; however, the greatest interest was to create a land condominium regime for 19 quarter-acre parcels and sell the property to contractors, landscapers, towing companies and nearby auto body shops who were desirous of owning their own storage facilities. During that time period, I met with Joe Carpenter, the only contiguous residential property owner, and other residents on Ashley Avenue and they expressed their concerns about the property being utilized for the above purposes.

9. During my conversations with the neighbors and prospective towing companies and landscapers, Scheer Partners Realty contacted me during the summer, 2007, to determine if the property could be developed in order for Interstate Corporation to relocate their corporate offices and to develop the property in a manner that would be supported by the residents on Ashley Avenue. Accordingly, I met with Mr. Perry Cho, the founder and President of the company. I explained to Mr. Cho that there was limited sewer and water service and that if he wanted to develop the entire property, he would ultimately have to deal with the City of Rockville to obtain additional service. Prior to purchasing the property, Mr. Cho met with the various permitting departments at Montgomery County and determined that the existing sewer and water line would enable him to enlarge the transmitter building to a 24,000-square-foot facility which would at least accommodate his corporate headquarters. The remainder of the property would have to be for towing companies and landscape storage if there was not additional sewer and water service.

10. During the several meetings with the neighbors, Mr. Cho indicated that he initially only wanted to construct one building that would be 30,000 square feet as opposed to a 24,000-square-foot building, which was the maximum size according to Montgomery County permitting offices because of the limited sewer and water service from the City of Rockville. Mr. Carpenter, the contiguous property owner, on December 21, 2007, sent a letter to Scott Ullery indicating that he strongly supported the larger building because he would have a greater privacy buffer and requested the City to enlarge the sewer and water service. The residents on Ashley Avenue also strongly supported Mr. Cho's development plan since it would provide an additional buffer from noise and light. Mr. Cho agreed that even though the property was not in the City of Rockville that it would be developed according to the proposed Industrial Zone that was in the process of being incorporated in the new Rockville Zoning Ordinance. He also agreed to do the following:

A. That all employees and suppliers and any subsequent occupants of the WINX property would have to access the development by using Dover Road and would not travel along North Stonestreet Avenue, Woodland Road, Crabb Avenue, Howard Avenue, Lincoln Avenue, Spring Avenue, Frederick Avenue, Elizabeth Avenue and Ashley Avenue. Mr. Cho agreed that language incorporating this ingress and egress restriction would be in all leases and other binding legal documents.

B. That he would install a fence that would separate the industrial property from the residential property on the other side of the Conservation Easement away from the homes so that it would not be immediately facing the residents across Ashley Avenue. The fence would have privacy buffer inserts to create a shrubbery appearance.

C. That the building elevation facing Ashley Avenue would be attractive and that all lights on the property would be directed away from the homes on Ashley Avenue.

11. Mr. Cho ultimately settled on the property on November 15, 2007. Prior to his purchase, I shared with Mr. Cho the information that I obtained from Homeland Security concerning the hazards/risks of the property being developed for residential use. Candidly, Mr. Cho and anyone else who has seen those emails have been surprised that the prior Mayor and City Council designated the WINX property to be residential in the Lincoln Park Neighborhood Plan.

12. On December 19, 2007, Mr. Cho had a meeting with Scott Ullery and Jim Wasilak and a follow-up meeting on February 1, 2008. You already have a four-page Statement of Fact prepared by Mr. Cho that discusses the events from December 19, 2007, through February 15, 2008, when Mr. Cho was informed by Scott Ullery that the City of Rockville, without notice and request, disconnected the sewer and water service for the property.

13. At the February 1, 2008, meeting, Scott Ullery basically stated that the Petition signed by the residents on Ashley Avenue and the letter from Joe Carpenter supporting the development of the WINX property for industrial use was totally insufficient and that Mr. Cho needed to obtain the approval of Wilma Bell. Since I knew Wilma Bell and have spoken to her many times during my four-year ordeal in dealing with the City, I called her concerning Mr. Cho's proposed development which was fully supported by the homeowners on Ashley Avenue and Joe Carpenter. At this time, I do not want to repeat Wilma Bell's comments. Pursuant to the February 1, 2008 meeting, Scott Ullery was to arrange a meeting with Wilma Bell and Perry Cho; however, Mr. Cho learned on February 15 that Wilma Bell was not interested in having the property developed as industrial in any manner and was not willing to talk to him. Mr. Ullery also at that time, on February 15, told Mr. Cho that he had the sewer and water service for the building disconnected.

14. A. Since Wilma Bell told Scott Ullery that she would not meet with Perry Cho, on February 15 I contacted a very well respected, soft-spoken resident in the Lincoln Park Neighborhood. I never met Ms. _____ before but I heard her speak at several neighborhood meetings and in her presentation to the community, I noticed that she was always very objective and well respected. **(PLEASE NOTE Ms. _____ requested not to get in the middle of this issue; therefore, I am respecting her desires in keeping her name confidential.)** When she spoke, people always listened because she made sense.

B. Ms. _____ met with Perry Cho and me the following week and spent several hours reviewing Mr. Cho's plan and the 33 pages of documents that were faxed to you. Ms. _____ was surprised that the information (the emails) that the City officials had prior to the adoption of the Neighborhood Plan was not disclosed to the community.

C. We explained to Ms. _____ the only reason that Perry Cho's development project is not going forward is because of Wilma Bell's

vehement opposition to the industrial use of this property. Ms. _____ went to the WINX site and evaluated the proposed plan and said the development of the property as proposed by Mr. Cho was far superior than the property being used as a facility for towing companies, landscapers and other permissible uses within the Montgomery County I-1 Zone.

15. I realize Wilma Bell's sincere interest in protecting the Lincoln Park neighborhood; however, what is being proposed is better for the neighborhood than the alternative uses that Mr. Cho would be forced to implement. I would like to emphasize the WINX property is already zoned Industrial and the City of Rockville now has an opportunity for the property to be developed in a manner that is most favorable to the Lincoln Park community.

16. I would like to emphasize that the City of Rockville can easily accommodate the additional sewer and water service that Mr. Cho needs in order to initially develop his requested 30,000-square-foot building. The Rockville City Code in Article 10, Section 12, specifically provides **THE MAYOR AND COUNCIL OF ROCKVILLE SHALL HAVE THE POWER TO EXTEND ITS WATER OR SEWER SYSTEM BEYOND THE CITY LIMITS.** As indicated previously, Mr. Cho is willing to proceed with the annexation process and to enter into binding recorded covenants setting forth his commitments to the community.

As stated in my emails that I sent out yesterday to Scott Ullery and to you and the other members of the City Council, please let me know when everyone is available to meet later this week.

Very truly yours,

Robert E. Reiver

cc (email) to: John Britton, Councilmember
Piotr Gajewski, Councilmember
Phyllis Marcuccio, Councilmember
Anne M. Robbins, Councilmember

Scott Ullery, City Manager

Paul T. Glasgow, Esquire, City Attorney
Sondra H. Block, Esquire, City Attorney

Mr. Perry Cho



Brenda Bean/RKV
07/07/2008 02:41 PM

To rereiver@aol.com
cc mayorcouncil@rockvillemd.gov, Susan Swift/RKV,
Deane Mellander/RKV, Jim Wasilak/RKV,
bcc
Subject Re: Tonight's Work Session -- WINX Property

Dear Mr. Reiver ~

On behalf of the Mayor and Council, thank you very much for your e-mail concerning proposed changes to the Rockville Zoning Ordinance. Your comments will be marked as an exhibit and placed into the official record in this matter.

As you know, the Mayor & Council will convene in worksession this evening to discuss the proposed changes to the Zoning Ordinance, and it will be broadcast live at 7:00 pm should you wish to tune in.

Thank you again,

Brenda F. Bean
Deputy City Clerk
111 Maryland Avenue
Rockville, Maryland 20850
email: bbean@rockvillemd.gov
phone: (240) 314-8280
fax: (240) 314-8929
rereiver@aol.com



rereiver@aol.com
07/07/2008 11:22 AM

To mayorcouncil@rockvillemd.gov
cc
Subject Tonight's Work Session -- WINX Property

Please review the attached letter.

Bob Reiver

The Famous, the infamous, the lame - in your browser. [Get the TMZ Toolbar Now!](#)



WINXPropertyZoningOrdinance7-07-08.doc